IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

A.O. No. 185 of 2004

Date of decision: 23rd February, 2006

A.F.R. (Approved for Reporting)

~~Not Approved for Reporting~~

Date 23.2.2006 Initials of Judge

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

A.O. No. 185 of 2004

1. Smt. Rammurti W/o Late Shobhi Ram
2. Suresh S/o Late Shobhi Ram
3. Km. Saroj D/o Late Shobhi Ram
4. Satyepal S/o Late Shobhi Ram
   All R/o Gram Dandi Abhey Chandra,
   Thana Baheri, District Bareilly. …… Appellants

Versus

1/1. Amarjeet Singh
1/2. Surender Singh
1/3. Paramjeet Singh S/o Kernell Singh
1/4. Smt. Gurdeep Kaur W/o Karnell Singh
   R/o C-53 Harvinder Wali Gali, Rudrapur,
   District Udham Singh Nagar.
2. M/s National Insurance Company,
   Divisional Office, Tikonia,
   Haldwani, Nainital ……. Respondents

Mr. Z.U. Siddiqui, Advocate for the appellants.
Mr. D.S.Patni, Advocate for respondent No. 2.

JUDGMENT

Coram: Hon. Rajeev Gupta C. J.
Hon. M.M. Ghildiyal, J.

RAJEEV GUPTA, C.J. (Oral)

Mr. Z.U. Siddiqui, Advocate for the appellants.

Mr. D.S.Patni, Advocate for second respondent National Insurance Company.

2. With the consent of the learned counsel for the parties, the appeal is finally heard.

3. This is claimants' appeal for enhancement of the compensation awarded by Motor Accident Claims Tribunal / Additional District Judge, Haldwani, District Nainital vide Award dated 29.03.2004 passed in Motor Accident Claim Petition No. 215 of 1990.

4. The claimants claimed compensation of Rs. 3,00,000/- for the death of one Shobhi Ram, husband of first appellant Smt. Rammurti

and father of appellants Nos. 2 to 4 Suresh, Km. Saroj and Satyepal, who died on account of the injuries sustained by him in the accident, which took place on 12.12.1989 when he was dashed by the offending vehicle Truck bearing registration No. USI 1055. The claimants pleaded that Shobhi Ram used to earn Rs. 3,000/- per month by selling vegetables.

5. The owner and the insurer of the offending vehicle Truck contested the claim and denied their liability to pay compensation to the claimants. The Insurance Company further pleaded that the driver of the offending vehicle Truck was not holding a valid driving license at the time of the accident.

6. The Tribunal, on the evidence led by the parties, held that Shobhi Ram died on account of the injuries sustained by him in the accident and that the accident occurred due to rash and negligent driving of the driver of the offending vehicle Truck. Though the insurer of the Truck was not held liable to pay compensation to the claimants as the driver of the offending vehicle Truck was not holding a valid driving license, in view of the dictum of the Apex Court in the case of Swarn Singh, the Insurance Company was directed to pay compensation to the claimants with a further direction to recover the same from the owner of the offending vehicle.

7. Considering the evidence led by the claimants about the income of the deceased, the Tribunal assessed his income at Rs. 3,000/- per month and Rs. 36,000/- per annum. By deducting 1/3rd of the said amount as personal expenses of the deceased, the annual dependency of the claimants was assessed as Rs. 24,000/- per annum. As deceased Shobhi Ram was 60 years of age, the Tribunal selected the multiplier of 8 and by multiplying the annual dependency of Rs. 24,000/- with the multiplier of 8, the compensation was worked out at Rs. 1,92,000/-. Further sum of Rs. 2,000/- towards funeral expenses; Rs. 5,000/- for loss of consortium to the widow; and Rs.

2,500/- for loss of estate, were awarded. Thus, a total sum of Rs. 2,01,500/- with interest at the rate of 9% per annum from the date of the application was awarded to the claimants as compensation for the death of Shobhi Ram in the accident.

8. Mr. Z.U. Siddiqui, learned counsel for the appellants vehemently argued that the Tribunal has erred in awarding low compensation of Rs. 2,01,500/- only though the claimants have lost the sole earning member of the family in the death of Shobhi Ram in the accident.

9. Mr. D.S. Patni, learned counsel for the second respondent National Insurance Company supported the award and contended that no fault can be found with the award as the Tribunal accepted the income of the deceased as was pleaded by the claimants and the multiplier of 8, applicable to the age ground of 55-60 years, was selected by the Tribunal as deceased Shobhi Ram, according to the post-mortem report, was 60 years of age at the time of the accident.

10. The claimants themselves pleaded that deceased Shobhi Ram used to earn Rs. 3,000/- per month by selling vegetables. The Tribunal accepted the said income of Rs. 3,000/- per month as the income of the deceased. We do not find any fault in the approach of the Tribunal in deducting 1/3rd of the income of the deceased as his personal expenses and in assessing the dependency of the claimants at Rs. 24,000/- per annum. Similarly, the selection of multiplier of 8 cannot be found fault with as the Second Schedule of the Motor Vehicles Act prescribes the multiplier of 8 only for the age group of 55-60 years and deceased Shobhi Ram, according to the post-mortem report, was 60 years of age at the time of the accident. The Tribunal has awarded further sum of Rs. 2,000/- towards funeral expenses; Rs. 5,000/- for loss of consortium to the widow; and Rs. 2,500/- for loss of estate. Thus, the Tribunal has awarded compensation under all the permissible heads.

11. We, therefore, do not find any scope for enhancement of the compensation awarded by the Tribunal either on account of the income of the deceased / the dependency of the claimants or the multiplier selected by the Tribunal.

12. The appeal filed by the appellants under Section 173 of the Motor Vehicles Act, therefore, is liable to be dismissed and is, hereby, dismissed. No order as to costs.

(M.M. Ghildiyal , J.) **(Rajeev Gupta, C.J.)**
23.02.2006 **23.02.2006**

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